

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN GARCIA-CORTEZ,

Defendant - Appellant.

No. 05-50269

D.C. No. CR-03-00086-NM-2

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Nora M. Manella, District Judge, Presiding

Submitted August 21, 2006**

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Juan Garcia-Cortez appeals from the 168-month sentence imposed after his guilty-plea conviction for conspiracy to possess and distribute pseudophedrine, knowing and having reasonable cause to believe that the pseudophedrine would be used to manufacture methamphetamine, in violation of 21 U.S.C. § 846. We have

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291 and affirm.

Garcia-Cortez contends that retroactive application of the remedial portion of *United States v. Booker*, 543 U.S. 220 (2005), violated his due process rights and the ex post facto clause. Both contentions are foreclosed by *United States v. Dupas*, 419 F.3d 916, 920-21, 924 (9th Cir. 2005), and *United States v. Staten*, 450 F.3d 384, 388 (9th Cir. 2006).

Garcia-Cortez further contends the district court clearly erred by attributing to him the entire amount of pseudophedrine seized by investigators. The court reasonably determined from telephone calls between Garcia-Cortez and his associates and from proffered admissions by a co-defendant that Garcia-Cortez agreed to purchase the entire amount. *See United States v. Asagba*, 77 F.3d 324, 326 (9th Cir. 1996). Accordingly, it was not unreasonable for the district court to base the sentence on the entire amount of pseudophedrine seized. *See United States v. Plouffe*, 445 F.3d 1126, 1131 (9th Cir. 2006).

AFFIRMED.